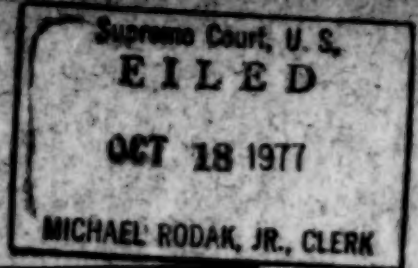


No. 77-300



In the Supreme Court of the United States

OCTOBER TERM, 1977

RICHARD KANANEN, PETITIONER

v.

**JOSEPH A. CALIFANO, JR., SECRETARY
OF HEALTH, EDUCATION AND WELFARE**

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT**

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.**

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Petitioner seeks review of a decision affirming the reduction of his disability insurance benefits, pursuant to 42 U.S.C. (and Supp. V) 424a, because of his receipt of workmen's compensation benefits.

Petitioner was awarded workmen's compensation benefits for a disability caused by back injuries for a period beginning October 28, 1967. After he had received weekly payments for a period of about nine months,¹ on or about

¹Petitioner received \$61.75 per week for the period from October 28, 1967, to July 26, 1968, in a total amount of \$2,408.25, as well as \$1,445.20 for medical expenses. 555 F. 2d at 669. (We refer to the official report of the decision below because the appendix to the petition is not paginated and is incomplete.)

July 30, 1968, petitioner entered into a settlement with the compensation insurance carrier in the amount of \$15,000. Of this amount, \$9,884 represented settlement for weekly compensation. 555 F. 2d at 669.

In 1974, petitioner also was awarded disability insurance benefits pursuant to 42 U.S.C. (and Supp. V) 416(i) and 423 for disability due to mental illness. Pursuant to 42 U.S.C. (and Supp. V) 424a, petitioner's disability benefits were reduced because of his receipt of workmen's compensation benefits. 555 F. 2d at 668-669. Petitioner challenged the reduction in benefits on the ground that the statute does not apply to workmen's compensation benefits awarded for a different disability from that for which disability benefits were paid, and he also contested the amount of the offset. 555 F. 2d at 669.

After exhausting his administrative remedies, petitioner sought review in the district court, which affirmed the reduction of his benefits (Pet. App. A). The court of appeals affirmed (Pet. App. B).

The court of appeals' decision is correct and does not warrant review by this Court.

1. 42 U.S.C. (and Supp. V) 424a provides in relevant part that an individual who is entitled to both disability insurance benefits and workmen's compensation benefits in any particular month shall have his disability insurance benefits reduced pursuant to a statutorily prescribed formula.² The Secretary determined, and both

²The reduction is in an amount equal to the workmen's compensation benefits received, unless 80 percent of the individual's average current earnings is greater than the disability insurance benefits to which the individual is entitled before reduction. In the latter situation, disability insurance benefits are to be reduced by the amount by which the sum of disability insurance benefits plus workmen's compensation benefits exceeds 80 percent of average current earnings. 42 U.S.C. 424a(a)(3)-(5).

courts below held, that the provisions of 42 U.S.C. (and Supp. V) 424a apply to petitioner's claim for disability insurance benefits, notwithstanding the fact that he received his workmen's compensation benefits as a result of his back injuries and the cause of his disability for disability insurance benefits was mental illness. This interpretation follows the unambiguous language of the statute, which provides for an offset in the case of any receipt of periodic benefits for total or partial disability under state workmen's compensation law, without regard to the event triggering entitlement under state law. Cf. *Grant v. Weinberger*, 482 F. 2d 1290 (C.A. 6).

Moreover, the legislative history supports this interpretation. The offset provided by 42 U.S.C. (and Supp. V) 424a was enacted to correct a problem created by the overlap between workmen's compensation programs and federal disability insurance programs, which in some cases resulted in the payment of total benefits that exceeded an employee's pre-disability take-home pay, thereby reducing his incentive to return to work and impeding state rehabilitative programs. *Richardson v. Belcher*, 404 U.S. 78, 82-83. In *Richardson* this Court therefore held that there is a rational basis for the classification created by the statute. Contrary to petitioner's contention (Pet. 4), the application of the offset provision to his case is not arbitrary, since Congress' concerns are equally applicable whether the overlap between state and federal benefits is triggered by the same disability or not.

2. Petitioner also contends (Pet. 3) that the courts below and the Secretary erred in "completely disregarding" his evidence regarding computation of the offset and in crediting evidence he had shown to be "tainted." The district court found substantial evidence in the record

to support the Secretary's findings, however, and the court of appeals affirmed.³ There is no occasion for further review of these factual findings.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

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³Petitioner asserted in the court of appeals that he did not receive part of the weekly workmen's compensation benefits due from the compensation insurance carrier. 555 F. 2d at 671 n. 3. The court of appeals held that petitioner's factual assertion was irrelevant to the disposition of the case, since the offset provision was applied with respect only to the lump-sum settlement payment received by petitioner and not to the previously received weekly periodic payments. *Ibid.* Petitioner also contended that the lump-sum payment was not a substitute for periodic payments. The court of appeals found no support for this contention in the record. 555 F. 2d at 670-671.